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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, ESSEX COUNTY
GENERAL EQUITY PART

NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION, : Docket No.:

Plaintiff, : Special Environmental Case

v. : VERIFIED COMPLAINT

AMERICAN RENDERING CORP., INC., :
BERKOWITZ FAT CO., INC., :
HARRY BERKOWITZ INDUSTRIES, :
INC., :
SEYMOUR BERKOWITZ, INDIVIDUALLY:

Defendants. :

Plaintiff, State of New Jersey, Department of
Environmental Protection ("DEP" or "Department") by way of verified
complaint against defendants, says:

NATURE OF THE ACTION

1. This is a civil action brought to enjoin the unlawful
activities associated with defendants' meat rendering business
which include generally: (Count One) the unlawful operation of

meat waste processing equipment that emits harmful air pollution, including extreme and obnoxious odors, in violation of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., (the "APCA"); (Count Two) the unlawful discharges of petroleum, blood, grease and other rendering wastes to the ground and ground water, in violation of the Water Pollution Control Act (the "WPCA"), N.J.S.A. 58:10A-1 et seq.; (Count Three) the outdoor uncovered storage of meat waste at the facility in violation of the Solid Waste Management Act ("SWMA"), N.J.S.A. 13:1E-1 et seq.; and (Count Four) the creation of an unreasonable public nuisance by constituting a major source of obnoxious odors and a breeding-ground for pests and vermin. Hereinafter, the above cited statutes will be referred to collectively as "the Acts."

2. Pursuant to the APCA, N.J.S.A. 26:2C-17(a), the WPCA, N.J.S.A. 58:10A-10, and the SWMA, N.J.S.A. 13:1E-9(d), the Department is authorized to institute a civil action in Superior Court for temporary and permanent injunctive relief for violations of these Acts. Furthermore, each Act authorizes the Court to proceed in a summary manner. Id.; R. 4:67. The Department is not seeking penalties in this action.

PARTIES

3. The State of New Jersey Department of Environmental Protection is a principal Department of the State of New Jersey with

principal offices at 401 East State Street, Trenton, New Jersey 08625.

4. Defendants, American Rendering Corporation, Inc., Berkowitz Fat Company, Inc., Harry Berkowitz Industries, Inc., and Seymour Berkowitz, individually (collectively referred to as the "defendants"), own the real property and/or operate a meat rendering business located at 38-42 Bay Avenue, Block 5088 and Lot 30, Newark, Essex County, New Jersey 07105 (the "site" or "facility").
5. Defendant Berkowitz is the president, owner, and hands-on director of operations of the facility, with the decision-making power to cease the ongoing non-compliance alleged herein.

GENERAL BACKGROUND

6. Defendants reported, in a letter to the Department dated November 22, 2006, that "...the Company is a rendering business in which over a million pounds of meat waste products are delivered to the plant each week."
7. Upon delivery to the facility, the meat waste used in the facility's rendering process is initially dumped and stored on the ground, in the open air. The meat waste is not dumped or stored within a building or even covered by a tarp.
8. The meat waste is then transferred into an open pit which feeds a screw conveyor. The screw conveyor transports the

meat waste from the pit to the inside of a building at the site while it grinds the meat waste into smaller pieces. Neither the pit nor screw conveyor are covered or enclosed.

9. Defendants cook, or "render," the meat waste after it is transferred inside the building at the site, and thereby separate the liquid tallow from the solids. This part of defendants' process takes place in 6 large "cookers," and is the major source of air emissions and odors from the facility. Some of the resulting materials are bone meal, protein meal and liquid tallow.
10. The bone meal, protein meal, liquid tallow, and other materials resulting from defendants' rendering process are then transported to other areas of the site for storage.

COUNT ONE (Air Pollution Control Act)

11. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if they were set forth here in their entirety.
12. Under the APCA, "No person shall construct, reconstruct, install, or modify equipment or control apparatus and then use or cause to be used that equipment or control apparatus except in accordance with P.L. 1954, c. 212 (C. 26:2C-1 et seq.) and the rules and regulations adopted pursuant thereto." N.J.S.A. 26:2C-9.2(a).

13. Under the APCA, the DEP has the power to make "rules and regulations preventing, controlling and prohibiting air pollution throughout the State...." N.J.S.A. 26:2C-8.
14. Air pollution is defined as "the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards." N.J.A.C. 7:27-5.1.
15. The Department's regulations prohibit the emission of air contaminants, or odors, that fit the regulatory definition of air pollution. N.J.A.C. 7:27-5.2.
16. APCA regulations, duly promulgated by the Department, require an application, with specific engineering standards, be submitted to the Department prior to the construction or modification of a "significant source that is not covered by a permit and certificate without first obtaining a preconstruction permit." N.J.A.C. 7:27-8.3(a).
17. APCA regulations provide that "no person shall operate (nor cause to be operated) a significant source or control

apparatus serving the significant source without a valid operating certificate." N.J.A.C. 7:27-8.3(b).

18. "Significant source" means a source that is required to have a permit under N.J.A.C. 7:27-8, and belongs to one of the categories enumerated in N.J.A.C. 7:27-8.2(c).
19. APCA regulations provide that "no person shall use or cause to be used any equipment or control apparatus unless all components connected or attached to, or serving the equipment or control apparatus, are functioning properly and are in use in accordance with the preconstruction permit and certificate and all conditions and provisions thereto." N.J.A.C. 7:27-8.3(e).
20. APCA regulations provide that "The Department and its representatives have the right to enter and inspect any facility or property in accordance with N.J.A.C. 7:27-1.31." N.J.A.C. 7:27-8.3(m).
21. APCA regulations mandate that record keeping by manual logging of pressure drops across the scrubber operation, once daily, be entered in a permanently bound log book or in readily accessible computer memories and shall be maintained on site for a minimum of 5 years after collection. N.J.A.C. 7:27-8.13.

22. APCA regulations provide that any person responsible for a source operation shall maintain records according to the type of operation. N.J.A.C. 7:27-16.16(g).
23. APCA regulations provide that the owner or operator of a facility shall submit to the Department an Emission Statement for each reporting year. N.J.A.C. 7:27-21.3(a).
24. The APCA mandates that any operation of equipment which may cause off-property effects, including odors, shall be reported to the DEP as required. N.J.S.A. 26:2C-19(e).
25. The facility is regulated under the APCA, and DEP's rules, by two permits.
26. The primary air emission control device (the "scrubber system"), which is designed to control harmful air emissions emanating from defendants' rendering process, is covered by a permit issued by the Department bearing agency reference # PCP030001 (hereinafter "the scrubber permit").
27. The Kewanee boiler, which is used as a heat source in the defendants' rendering process, is covered by the permit issued by the Department bearing agency reference # PCP960001 (hereinafter "the boiler permit").
28. The emissions from the rendering process and the uncovered rotting meat waste are sources of obnoxious odors and other potentially harmful air emissions.

29. The odors caused by defendants' rendering facility were verified by inspectors from the Essex County Regional Health Commission on April 7, 2005, April 22, 2005, June 29, 2005, January 25, 2006, with intensity levels up to 4 (Strong - objectionable odor which would cause a person to attempt to avoid it completely and may cause physiological effects during prolonged exposure) and 5 (Very Strong - overpowering and intolerable for any length of time and causes physiological effects).
30. Both the county inspectors and individual complainants (neighboring residents and businesses) have suffered from nausea, gagging, and have been forced to seek shelter from the odors or avoid the outdoors.
31. As required by its air permits, the facility installed an air control system consisting of three scrubbers and an air condenser, intended to minimize the potential for odors and air and particulate emissions, however, defendants are not operating the scrubber system in accordance with the requirements of the air permit bearing agency reference # PCP030001.
32. Representatives from DEP's Northern Bureau of Air Compliance and Enforcement conducted compliance inspections of defendants' facility on February 16, 2005, August 4, 2005, October 6, 2005, March 21, 2006, August 16, 2006, September

- 19, 2006, February 6, 2007, February 7, 2007, February 16, 2007 and May 1, 2007. Department representatives observed significant violations of defendants' permit requirements, and a complete disregard for the Department and the APCA, on each and every occasion that they inspected the facility.
33. DEP representatives observed, on February 6, 2007 (and later on February 16, 2007), that defendants' three scrubbers failed to contain any water circulation (one because of frozen water lines and the others because of faulty bearings and clogged strainers), which is a necessary and required component of the proper operation of defendants' air pollutant emission control system.
34. As of the Department's most recent inspection on May 1, 2007, the scrubber system was still not operating properly because there was no water circulation through two of the three scrubbers.
35. On February 6, and 16, 2007, Defendant Berkowitz verbally informed Department representatives that the facility was burning grease in the Kewanee boiler instead of fuel oil, even though the facility is not permitted, under the air permits, to use alternative fuels.
36. Since at least February 16, 2005, defendants continually failed to maintain records of the following parameters required by its air control system permit: pressure drop

across the scrubber for all three scrubbers; scrubber medium flow rate for the two packed bed scrubbers; scrubber medium pH for the two packed bed scrubbers; scrubber medium oxidation reduction potential for the two packed bed scrubbers; and gas outlet temperature for the air condenser.

37. Since at least February 16, 2005, defendants continually failed to maintain records of the gas outlet temperature of the air condenser.
38. Since at least February 6, 2007, defendants continually failed to maintain and provide volatile organic compound ("VOC") emission records for the operation of its six cookers.
39. Defendants failed to submit emissions statements for the years 2000, 2001, 2002, 2003, 2004, and 2005, as required by N.J.A.C. 7:27-21.3(a). Under the same rule, defendants are required to submit an emissions statement for the calendar year 2006, by May 15, 2007.
40. Defendants failed to conduct stack tests for total non-methane hydrocarbons, reduced sulfur compounds and amines, within 180 days of approval of its air control system permit on September 23, 2003, as required by the air permit.
41. There was a severe fire at the facility, on September 16, 2006, which caused a complete, but temporary, shutdown of defendants' operations. This fire caused extensive damage to the facility, including its structure and electrical system,

which prevented the facility from operating in accordance with its permits. The facility could not operate at all in the days immediately following the fire and, even though its monitoring system was not operational, the facility restarted its rendering operations approximately one month after the September 16, 2006 fire.

42. The Defendants failed to notify the Department of the September 16, 2006 fire, and its possible off-site air pollution impacts.

43. The Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AO/P") to defendants on or about January 27, 2006. (PEA 060001-05566). The Department alleged in the AO/P that defendants hindered the Department's right to enter and inspect the facility as required by N.J.A.C. 7:27-8.3(m). The January 27, 2006 AO/P ordered the submission of specific data and assessed an \$8,000 penalty.

44. Defendants submitted a hearing request contesting the AO/P (PEA 060001-05566) on or about February 16, 2006. The Department granted the administrative hearing request on May 24, 2006.

45. The Department issued an AO/P to defendants on or about April 13, 2006. (PEA 060002-05566). The Department alleged in the AO/P that defendants failed to submit Emission Statements to

- the Department as required by N.J.A.C. 7:27-21.3(a), failed to fulfill permit conditions in violation of N.J.A.C. 7:27-8.3(e), and failed to keep required records under N.J.A.C. 7:27-8.13. The AO/P ordered the defendants to cease operation of equipment, to perform a stack test, to submit Emission Statements, and payment of a \$288,400.00 penalty.
46. Defendants submitted a hearing request contesting the AO/P (PEA 060002-05566) on or about May 10, 2006. The Department granted the administrative hearing request on June 16, 2006.
47. The Department issued an AO/P to defendants on or about June 21, 2006. (PEA 060003-05566). The Department alleged in the AO/P that defendants permitted offensive odors from the facility to be emitted into the outdoor atmosphere in violation of N.J.A.C. 7:27-5.2(a). The AO/P ordered the defendants to cease the odor emissions, to submit and implement an odor control plan and payment of a \$4100.00 penalty.
48. Defendants submitted a hearing request contesting the AO/P (PEA 060003-05566) on or about June 28, 2006. The Department granted the administrative hearing request on August 8, 2006.
49. The Department issued an AO/P to defendants on or about October 10, 2006. (PEA 060004-05566). The Department alleged in the AO/P that defendants failed to fulfill permit requirements under N.J.A.C. 7:27-8.13 and N.J.A.C. 7:27-

8.3(e), failed to submit Emission Statements as required under N.J.A.C. 7:27-21.3(a), and failed to notify the Department of a September 16, 2006 fire involving the combustion of bone meal in the facility which caused a release of contaminants in a quantity or concentration which posed a potential threat to public health, welfare or the environment, and which might have reasonably resulted in citizen complaints in violation of N.J.S.A. 26:2C-19(e). The AO/P ordered the defendants to cease operation of equipment, to perform a stack test, to submit Emission Statements, and payment of a \$396,800.00 penalty.

50. Defendants submitted a hearing request contesting the AO/P, (PEA 060004-05566), on or about November 2, 2006. The Department granted the administrative hearing request on February 27, 2007.
51. On January 29, 2007 representatives from the Department visited the site to conduct a compliance evaluation. The DEP inspectors were denied entrance to the facility. On February 1, 2007, the Department applied to the Honorable Michael L. Ravin, J.S.C., in the Superior Court, Criminal Part, Essex County vicinage, for an Administrative Search Warrant.
52. On February 1, 2007 an order granting the administrative search warrant was signed by Judge Ravin. On February 6 and 7, 2007, with the assistance of State Troopers on February 6,

Department representatives executed the administrative search warrant.

53. By letter dated February 14, 2007, counsel for defendant Berkowitz represented he would implement specific immediate and long-term actions to remedy certain violations cited by the Department. In that letter, defendant Berkowitz claimed that "all air monitoring equipment as required by permit is expected to be installed, calibrated and operational within the next two (2) weeks," and that the required air emission control devices ("scrubbers") would be immediately operational upon a minor repair of a fan.
54. At a recent site inspection, on May 1, 2007, the Department observed that none of the remedial actions promised in defendant Berkowitz's February 14, 2007, letter to the DEP, had been taken, including the required operation of air emission monitoring equipment and the required operation of the scrubbers, which are defendants' primary air pollution control devices.
55. An AO/P was issued to defendants on April 18, 2007. (PEA 070003-05566). The Department alleged, in the AO/P that defendants failed to maintain records pursuant to N.J.A.C. 7:27-8.3(e), installed a grease drum cleaning operation without first obtaining the required permit pursuant to N.J.A.C. 7:27-8.3(a) and (b), installed a solid waste facility

for processing and transferring meat waste without first obtaining a preconstruction permit pursuant to N.J.A.C. 7:27-8.3(a) and (b), hindered the Department's right to inspect the facility pursuant to N.J.A.C. 7:27-1.31(a), failed to maintain and provide volatile organic compound ("VOC") records pursuant to N.J.A.C. 7:27-16.16(g), failed to submit Emission Statements pursuant to N.J.A.C. 7:27-21.3(a), failed to notify the Department that the scrubbers/emission controls were inoperable pursuant to N.J.S.A. 26:2C-19(e), failed to comply with the Department's previous orders (contained in AO/Ps with agency reference numbers PEA 060002-05566, PEA 060003-05566, and PEA 060004-05566), and failed to fulfill multiple permit conditions pursuant to N.J.A.C. 7:27-8.13 and N.J.A.C. 7:27-8.3(e).

56. The AO/P that was served on defendants on April 19, 2007, revoked defendants' air permits (bearing ID #s PCP030001 and PCP960001) and ordered the defendants to perform a stack test, submit Emission Statements, submit certain permit applications, and immediate maintenance of required records. (PEA 070003-05566). The Department assessed a total penalty of \$1,085,900.00 penalty in this AO/P.

57. As of the Department's most recent site inspection on May 1, 2007, defendants' violations of the APCA continue, including the failure to operate the required air pollution control

devices (or scrubbers), the failure to monitor emissions as required by permit, the failure to maintain emission and operating records, the failure to demonstrate compliance with permit requirements by conducting stack emission tests, and the failure to use the appropriate fuel types.

58. In spite of the Department's numerous attempts to obtain compliance with its orders, defendants instead completely disregard the APCA and continue to irreparably harm the environment and the public health.

WHEREFORE, the Department seeks judgment against the defendants as follows:

- a. Finding defendants in violation of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the air regulations, N.J.A.C. 7:27-1.1 et seq.;
- b. Requiring defendants to immediately comply with the Air Pollution Control Act, as set forth in the Department's numerous orders, including the required operation of the air pollution control devices (or scrubbers), the required operation of the air emission monitoring equipment, the required maintenance of accurate records, and the cessation of the unpermitted grease drum cleaning operation;
- c. Ordering defendants to submit an air compliance plan, prepared by a professional licensed engineer, within (30)

days to DEP, and after modification and/or approval of that air compliance plan by DEP, to fully and timely implement the air compliance plan in accordance with the DEP approved schedule. The air compliance plan shall address the formulation of an odor control plan, the construction of a permanent enclosure (to contain odors from the storage of meat waste on the site), the performance of each required stack emission test, and the submission of required annual emission statements;

- d. Ordering defendants, within thirty (30) days of the complete implementation of the DEP-approved air compliance plan, to submit a certification to DEP by a professional licensed engineer certifying that the facility is in compliance with the Air Pollution Control Act, and that the ongoing operation of the facility will no longer create off-site odors that pose an unreasonable public nuisance; and
- e. Ordering defendants, if defendants do not timely present and implement the air compliance plan referred to above (to the DEP's satisfaction), to cease all operations at the facility, and perform any other necessary remedial activities to ensure that nothing on the site poses an ongoing threat to the public health and safety or the environment;

- f. Granting such other relief as the Court deems just and proper.

COUNT TWO (Water Pollution Control Act)

59. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if they were set forth here in their entirety.
60. Pursuant to the WPCA, N.J.S.A. 58:10A-6, "It shall be unlawful for any person to discharge any pollutant except as provided pursuant to subsections d. and p. of this section, or when the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit."
61. Pursuant to the WPCA, N.J.S.A. 58:10A-3(n), "pollutant" means "any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue discharged into the waters of the State."
62. Pursuant to the WPCA, N.J.S.A. 58:10A-3(e), "discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State, onto land or into wells from which it might flow or drain into said waters or into waters or onto lands outside

the jurisdiction of the State, which pollutant enters the waters of the State. 'Discharge' includes the release of any pollutant into a municipal treatment works."

63. On June 16, 2005, DEP received a citizen complaint regarding defendants' property. As a result, on June 17, 2005, a representative of the Department's Bureau of Water Compliance and Enforcement conducted an inspection of the site.
64. The Department issued a Field Notice of Violation ("NOV") to defendants, on June 17, 2005, for the un-permitted discharge of pollutants (blood, grease, and fat) to the ground and groundwater. The June 17, 2005, NOV ordered defendants to immediately cease discharges of pollutants and apply for a New Jersey Pollutant Discharge Elimination System ("NJPDDES") permit.
65. On August 4, 2005, a DEP representative conducted a follow-up inspection of the facility and again observed discharges of pollutants, including petroleum diesel fuel, used engine oil, blood, fat, and other biological materials, into unpaved areas of the yard, as well as evidence of previous spills of pollutants in unpaved areas. Consequently, DEP issued an NOV to defendants on August 25, 2005. The August 25, 2005, NOV ordered the immediate cessation of discharges.
66. On October 6, 2006, the DEP conducted a follow-up inspection of the facility and again observed discharges of pollutants,

including petroleum diesel fuel, used engine oil, blood, fat, and other biological materials, into unpaved areas of the yard, as well as evidence of previous spills of pollutants in unpaved areas. Consequently, DEP issued an NOV to defendants on November 16, 2005 for the discharge of pollutants to the waters of the State without a valid NJPDES permit. The November 16, 2005, NOV ordered the immediate cessation of discharges.

67. By letter, dated December 15, 2005, defendants responded to the November 16, 2005 violations, denying any violations of New Jersey statutes or regulations. In defendants' December 15, 2005 letter, defendants stated that an environmental consulting firm had been hired to assess the site and elicit compliance recommendations.
68. On May 3, 2006, the Department issued an AO/P to defendant, Berkowitz Fat Co., Inc., for violations of the WPCA, N.J.S.A. 58:10A-1 et seq., and implementing regulations, N.J.A.C. 7:14A-1.1 et seq. (PEA 060001-255697). The May 3, 2006 AO/P ordered the defendants to comply with the WPCA, to cease "all un-permitted discharges of pollutants to the groundwaters of the State," and payment of a \$45,000 penalty.
69. On May 22, 2006, defendant, Berkowitz Fat Co., submitted an administrative Hearing Request to contest the May 3, 2006 AO/P. On June 16, 2006 DEP granted the May 22, 2006 hearing

request, and duly transmitted the hearing request to the Office of Administrative Law.

70. On September 19, 2006, the DEP conducted a follow-up compliance inspection of the facility. The DEP representative observed new discharges of pollutants, including petroleum diesel fuel, used engine oil, blood, fat, and other biological materials, into unpaved areas of the yard and evidence of previous spills of pollutants in unpaved areas. DEP issued an NOV to defendants on October 16, 2006 for discharging pollutants to the waters of the State of New Jersey without a valid NJPDES permit. The October 16, 2006, NOV ordered the immediate cessation of discharges at the facility.
71. On October 17, 2006, the DEP conducted a site investigation. The DEP representative observed many new discharges of pollutants, including petroleum diesel fuel, used engine oil, blood, fat, and other biological materials, into unpaved areas of the yard and observed evidence of previous spills of pollutants into unpaved areas. Accordingly, on October 25, 2006 DEP issued another NOV to the facility for discharging pollutants to the waters of the State of New Jersey without a valid NJPDES permit.
72. On February 6, 2007, and February 16, 2007, Department representatives conducted compliance inspections of the facility and observed ongoing discharges of pollutants,

including petroleum diesel fuel, used engine oil, blood, fat, and other biological materials, in violation of the WPCA. Accordingly, the Department issued NOVs dated February 21, 2007, and February 23, 2007, to defendant, Berkowitz Fat Co., which ordered the immediate cessation of the illegal discharges.

73. Representatives from the DEP observed, during their numerous inspections of defendants' facility, overturned drums which appeared to have contained oil or fuel, five gallon buckets overflowing with used motor oil and surrounded by used oil filters, pools of petroleum diesel fuel on the unpaved ground, a pool of green liquid on the unpaved ground which appeared to be automotive antifreeze, used auto parts on the ground, trucks leaking engine oil which formed pools in unpaved areas, ongoing maintenance of trucks which caused discharges of oil onto the ground, staining from prior spills from two 250 gallon tanks containing new motor and hydraulic oil and soil stained with what appeared to be cooking oil and pools of grease.
74. Throughout their multiple site inspections, the DEP inspectors have consistently observed discharges of waste meat products, both directly to unpaved areas of the facility or carried to unpaved areas by storm water, where the discharges could easily reach groundwater, including large piles of rotting

meat waste and blood in areas exposed to precipitation, and on one occasion a hot fluid discharge was seen emanating from the maintenance garage, which ran through the unpaved yard.

75. The facility has a storm water collection system which consists of trenches which flow to the PVSC sewers, however, these trenches are not designed properly and continually overflow resulting in further discharges to unpaved surfaces.
76. A DEP representative observed storm water run-off from the facility, which was bypassing the storm water collection trench surrounding the plant (which is an integral part of the sanitary sewer operated by the PVSC).
77. The surface soil in Newark is typified by a permeable fill material which ranges in thickness from five to fifteen feet below the ground surface. In addition, the groundwater table below this section of Newark can be as high five feet below the ground surface. It is highly likely that discharges of pollutants from the facility will reach the groundwater.
78. The environmental impacts from these discharges leaching into the groundwater include the possible degradation of the chemical, physical, and biological integrity of groundwater of the State by the pollutants contained therein, and prevention of any beneficial use of the groundwater.
79. On April 18, 2007, the Department issued an AO/P for the illegal discharges of pollutants to the waters of the State,

in violation of the WPCA. (PEA 060004-255697). The AO/P ordered defendants to immediately cease the unlawful discharges, and payment of a \$160,000 penalty.

80. As of the Department's most recent site inspection on May 1, 2007, defendants' violations of the WPCA continue.

81. In spite of the Department's numerous attempts to obtain compliance with its orders, defendants instead completely disregard the Department, continue to violate the WPCA, and present an ongoing threat to the public health and safety and the environment.

WHEREFORE, the Department seeks judgment against the defendants as follows:

- a. Finding defendants in violation of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., for the unlawful discharges of pollutants onto the ground and into ground waters of the State;
- b. Requiring defendants to comply the Water Pollution Control Act, as set forth in the Department's numerous orders, including the cessation of storing meat waste outside, the placement of appropriate spill containment devices under and/or around the oil and fuel tanks on the site, the installation of secondary shut-off valves on all fuel and oil tanks on the site, and the cessation of

truck/equipment maintenance on the site that results in uncontained discharges;

- c. Ordering defendants to submit a site remediation plan, prepared by a professional licensed engineer, within (30) days to DEP, and after modification and/or approval of that site remediation plan by DEP, to fully and timely implement the site remediation plan in accordance with the DEP approved schedule. The site remediation plan shall address the cleanup of the spills on the site in accordance with the Department's technical requirements, N.J.A.C. 7:26E-1.1 et seq., the construction of a permanent enclosure (to contain the runoff from defendants' meat waste), the appropriate prevention and containment of spills with respect to all of the storage tanks on the site, and standard operating procedures for the defendants' responsible maintenance of trucks and other equipment;
- d. Ordering defendants, within thirty (30) days of the complete implementation of the DEP-approved site remediation plan, to submit a certification to DEP by a professional licensed engineer certifying that the facility is in compliance with the Water Pollution Control Act and has been fully remediated in accordance with the DEP approved site remediation plan; and

- e. Ordering defendants, if defendants do not timely present and implement the site remediation plan referred to above (to the DEP's satisfaction), to cease all operations at the facility, and perform any other necessary remedial activities to ensure that nothing on the site poses a threat to the public health and safety or the environment;
- f. Granting such other relief as the Court deems just and proper.

COUNT THREE (Solid Waste Management Act)

- 82. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if they were set forth here in their entirety.
- 83. Under the SWMA, N.J.S.A. 13:1E-9(a), the DEP's rules "related to solid waste collection and disposal shall have the force and effect of law."
- 84. Pursuant to N.J.A.C. 7:26-2.8(e), no person shall engage or continue to engage in the disposal of solid waste in this State without first having filed a completed application for and receiving a Solid Waste Facility ("SWF") Permit from DEP.
- 85. Pursuant to N.J.A.C. 7:26-1.4, "disposal" means the storage, treatment, utilization, processing, or final disposition of solid waste, specifically including the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid

waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

86. Pursuant to N.J.A.C. 7:26-1.6(a), "solid waste" means "any garbage, refuse, sludge, or any other waste material" not including recyclable material exempted from regulation pursuant to N.J.A.C. 7:26A. "Any other waste material" is defined to include by-products from industrial, commercial, mining or agricultural operations which are recycled. N.J.A.C. 7:26-1.6(b). In section (c) of that rule, solid waste is further defined as anything that is "disposed of" including any material "being discharged, deposited, injected, dumped, spilled, leaked, or placed into or on any land or water."
87. Pursuant to N.J.A.C. 7:26-2.8(f), no person shall begin construction or operation of a solid waste facility without obtaining a SWF Permit.
88. Pursuant to N.J.A.C. 7:26-1.4, a solid waste facility "means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste..."

89. Representatives from the Department, Bureau of Solid Waste Compliance and Enforcement, conducted inspections of the facility on October 17, 2006, February 16, 2007, February 28, 2007, and May 1, 2007.
90. During these inspections, the DEP inspector observed meat waste deposited and stored on a concrete pad and on unpaved portions of the site in a pile 10-12 feet in height and 12-15 feet wide. These meat waste storage areas had no containment around it, was not covered, instead it was exposed to precipitation, air, sun, heat, vermin, pests, and runoff.
91. The Department issued an AO/P to defendants, on April 18, 2007, for failing to obtain a SWF permit prior to constructing or operating a solid waste facility. (PEA 070002-U1276). The Department, in the AO/P, ordered the defendants to immediately cease the unauthorized storage of solid waste and payment of a \$45,000 penalty.
92. The description of noncompliance cited in the April 18, 2007 AO/P (ID # PEA 070002-U1276) constitutes violations of the SWMA, N.J.A.C. 7:26-2.8(f).
93. As of the Department's most recent site inspection on May 1, 2007, defendants' violations of the SWMA continue, including the outdoor disposal and storage of truckloads of meat waste onto the unpaved surfaces of the ground.

94. In spite of the Department's numerous attempts to obtain compliance with its orders, defendants instead completely disregard the Department and continue to violate the SWMA.

WHEREFORE, the Department seeks judgment against the defendants as follows:

- a. Finding defendants in violation of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., for the illegal operation of a solid waste facility;
- b. Requiring defendants to immediately comply with the Solid Waste Management Act, including the cessation of disposal and storage of solid waste at the facility, which could be accomplished by moving the receiving area for all meat waste to an indoor/enclosed area of the facility; and
- c. Ordering defendants, if defendants do not timely comply with the Solid Waste Management Act (to the DEP's satisfaction), to cease all operations at the facility, and perform any other necessary remedial activities to ensure that nothing on the site poses a threat to the public health and safety or the environment;
- d. Granting such other relief as the Court deems just and proper.

COUNT FOUR (Public Nuisance)

95. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if they were set forth here in their entirety.
96. Defendants' meat waste rendering operation, including the open-air storage of huge piles of rotting meat waste (up to 10-12 feet high and 15 feet wide), the cooking/rendering of one million pounds of meat waste per week, and the continuous uncontained spills of immeasurable quantities blood, fat, grease, diesel fuel, and used engine oil, constitutes a public nuisance.
97. Defendants' unsanitary operation provides a breeding ground for vermin, insects, disease, and odors that unreasonably interfere with the use and enjoyment of surrounding public and private property, which include a high density of residents and businesses.
98. As of the Department's most recent site inspection on May 1, 2007, defendants' violations continue.
99. In spite of the Department's numerous attempts to obtain compliance with its orders, defendants instead completely disregard the Department and continue to irreparably harm the environment and the public health.

WHEREFORE, the Department seeks judgment against the defendants as follows:

- a.. Finding defendants responsible and liable for the creation of a public nuisance, by unreasonably interfering with the use and enjoyment of neighboring properties;
- b. Requiring defendants to immediately cease the outdoor storage and disposal of meat waste at the site, which is the primary cause of the unreasonable off-site odors;
- c. Ordering defendants to submit to DEP, through a professional licensed engineer, an odor control plan that includes a detailed schedule for its implementation;
- d. Ordering defendants, upon DEP's approval and/or modification of the odor control plan, to implement the odor control plan in accordance with the DEP approved schedule;
- e. Ordering defendants, if defendants do not timely present and implement the odor control plan referred to above (to the DEP's satisfaction), to cease all operations at the facility, and perform any other necessary remedial activities to ensure that nothing on the site poses a threat to the public health and safety or the environment; and
- f. Granting such other relief as the Court deems just and proper.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY



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Trenton, NJ 08625
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(fx) 609-341-5031

VERIFICATION

Michael Cisek, by way of certification, states that:

1. I am a Principal Environmental Specialist employed in the Air Compliance and Enforcement Bureau of the New Jersey Department of Environmental Protection since 1987.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in Paragraphs 1-58 are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

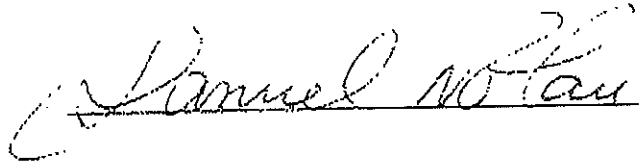
Date: May 9, 2007

Michael Cisek
Michael Cisek

VERIFICATION

Manuel Nolau, by way of certification, states that:

1. I am a Principal Environmental Engineer employed in the Water Compliance and Enforcement Bureau of the New Jersey Department of Environmental Protection since 1995.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in Paragraphs 59-81 are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

A handwritten signature in cursive script, reading "Manuel Nolau", is written over a horizontal line.

Date: May 9, 2007

Manuel Nolau

VERIFICATION

Walter Bell, by way of certification, states that:

1. I am a Principal Environmental Engineer employed in the Bureau of Solid Waste Compliance and Enforcement of the New Jersey Department of Environmental Protection since 2002.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in Paragraphs 82-99 are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.


Date: May 9, 2007


Walter Bell

CERTIFICATION PURSUANT TO R.4:5-1

I hereby certify that I am a Deputy Attorney General assigned to prosecute this matter and am counsel of record for the within matter. I am designated trial counsel pursuant to R. 4:5-1(c). I am not aware of any pending litigation or action besides: (1) Passaic Valley Sewerage Commissioners v. Harry Berkowitz Industries, Inc., Docket No.: C-14-07, filed in the Superior Court of New Jersey, Chancery Division, Essex County, on January 9, 2007, which is currently pending before the Honorable Kenneth S. Levy P.J.S.C.; and (2) the administrative hearing requests pending in the Office of Administrative Law regarding the multiple Administrative Orders and Notices of Civil Administrative Penalty Assessments ("AO/Ps") issued by DEP to defendants, as set forth herein. I am not aware of any other parties that should be joined in this litigation.

DATED: May 9, 2007



Daniel A. Greenhouse
Deputy Attorney General